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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,346	10/25/2001	John W. von Holdt SR.	10778.00008	8313
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BANNER & WITCOFF, LTD. TEN SOUTH WACKER DRIVE SUITE 3000 CHICAGO, IL 60606				
			EXAMINER CASTELLANO, STEPHEN J	
			ART UNIT 3727	PAPER NUMBER

DATE MAILED: 10/16/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n N .

10/002,346

Applicant(s)

VON HOLDT ET AL.

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communicati n appears on the cover sheet with the correspond nce address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,8 and 9 is/are pending in the application.
- 4a) Of the above claim(s) 2 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4,8 and 9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 2 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 6) ☐ Other: _____

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Newly submitted claim 2 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claim 2 states that there are no external ribs or rings on the annular lip, Fig. 14 shows the only embodiment or specie having no external ribs or rings on the annular lip. The Fig. 14 specie was never specifically claimed previously

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 2 has been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 4, 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Letica ('080)(Letica 1), Letica ('805)(Letica 2) and Letica ('119) (Letica 3).

Letica 1 discloses the invention as best shown in Fig. 3, Letica 2 discloses the invention as best shown in Fig. 3, 5 and 7 (Fig. 3 and 7 are explained) and Letica 3 discloses the invention as best shown in Fig. 3 and 5 (Fig. 3 explained).

Letica 1, Letica 2 and Letica 3 disclose a plastic bucket comprising an upright, annular bucket wall (sidewall 22) having an inside wall radius and connecting to an annular lip, the annular lip comprising a single annular wall portion extending upwardly from the bucket wall along a diagonal path (at inset wall 34), then in an upright vertical direction forming a first vertical wall section (connecting wall 30) having an outside radius and an inside radius, then

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outwardly in a horizontal annular flange (inset wall 36), and then upwardly in a vertical rim (that portion of the annular lip above second leg 41 and below bead 44 which includes portions of the arcuately shaped locking lip 46 at the inside rim wall), the vertical rim having an inside rim wall and an outside rim wall, the outside rim wall having a radius less than the inside wall radius of the annular bucket wall. Although no dimensions are discussed, it is readily apparent from Fig. 3, 5 and 7 that the relationship of the outside rim wall having a radius less than the inside wall radius of the annular bucket wall exists. All other radial dimension limitations are clearly shown.

Note that the a horizontal annular flange could be sloped with respect to true horizontal as the broadest definition of horizontal is defined as: of, relating to, or near the horizon (see definition in the Appendix). The sloped line of the annular flange is near the horizon.

Note that the word "single" in the term "single, diagonal path annular wall portion" refers to one but doesn't preclude the existence of other diagonal path annular wall portions.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This rejection is being made in the event the election of species by original presentation is deemed improper.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Letica 1, Letica 2 and Letica 3.

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Each of the Letica references discloses the invention except for the absence of the external rib or ring on the annular lip. It would have been obvious to remove all external ribs and rings on the annular lip in order to save the plastic material, reduce cost and reduce the weight of the container if the need for the reinforcement provided by the ribs or rings is deemed unnecessary.

Claims 1-4, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Letica 1, Letica 2 and Letica 3 in view of Zeni et al. (Zeni).

This rejection is made if it should be deemed that the sloped annular flange is not horizontal.

Each of the Letica references discloses the invention except for the horizontal, annular flange. Zeni teaches a similarly constructed annular lip with a single, diagonal path annular wall portion, a first vertical wall section, a generally vertical rim and a single, horizontal (parallel to true horizontal), annular flange integrally joining the first vertical wall section and the generally vertical rim. It would have been obvious to modify the generally horizontal annular flange to be parallel to true horizontal as a matter of engineering design choice in choosing a flange configuration which provides the ultimate amount of hoop strength by being perpendicularly oriented to the general direction (vertical) the sidewall traverses.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114.

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See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc

APPENDIX

hor-i-zon-tal

hor-i-zon-tal (hŏr'izŏnəl, hŏr-) *adjective*

Abbr. hor.

1. Of, relating to, or near the horizon.
2. a. Parallel to or in the plane of the horizon. b. At right angles to a vertical line.
3. Occupying or restricted to the same level in a hierarchy: *a horizontal study of verbal ability; a horizontal transfer for an employee.*

noun

Something, such as a line, a plane, or an object, that is horizontal.

[French, from Latin *horiz* *n*, *horizont-*, horizon. See horizon.]

— **hor i-zon tal-ly** *adverb*

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